

MINUTES

HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE

December 14, 2005
Room 519-S—Statehouse

Members Present

Dick Bond, Chairman
Senator Greta Goodwin
Representative Eber Phelps
Representative Jim Morrison
Dr. Paul Kindling
Dr. James Rider
Dr. Arthur D. Snow

Members Absent

Senator James Barnett
Dr. Debra Doubek-Phillips
Gene Schmidt

Staff Present

Melissa Calderwood, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office

Others Present

Bob Hayes, Health Care Stabilization Fund
Gary Zook, Health Care Stabilization Fund
Kathy Dorst, Health Care Stabilization Fund
Laura Ray, Health Care Stabilization Fund
Rita Noll, Health Care Stabilization Fund
Lorie Anderson, Health Care Stabilization Fund
Russel Sutter, Tillinghast
Callie Denton, Kansas Trial Lawyers Association
Kurt Scott, Kansas Medical Mutual Insurance Company (KaMMCO)
Jerry Slaughter, Kansas Medical Society

Tuesday, December 14

The Chairman called the meeting to order at 9:05 a.m. The Chairman noted two members would be absent, Gene Schmidt and Senator James Barnett. The Chairman thanked the members for their presence and outlined five potential requests for action and inclusion in the annual report for the Committee:

- The two statutorily required questions (KSA 40-3403b):
 - Should the Committee request an independent actuarial review of the Health Care Stabilization Fund be completed in 2006;
 - Should the Legislative Oversight Committee be continued for another year;
- Consideration of a motion to support possible action to increase the basic coverage limit from \$200,000 to \$300,000;
- Consideration of possible legislation to allow the Fund Board of Governors to assess late interest payments on the Fund surcharge; and
- Consideration of continuing the Committee position of opposition to any transfer of Fund moneys to the State General Fund.

The Chairman requested that all conferees address these issues in their testimony.

The Chairman recognized Melissa Calderwood and Susan Kannarr, Kansas Legislative Research Department, for an update on Fund law and recent changes in health policy governance. Ms. Calderwood outlined an information packet that was provided to the Committee including a copy of the 2005 Committee Report, highlighting the two previous Committee recommendations about transfers from the Fund to the State General Fund (Attachment 1). Ms. Calderwood and Ms. Kannarr provided an overview of the establishment of the Kansas Health Policy Authority by the 2005 Legislature, the timeline for transfer of responsibilities for health policy governance at the state level, and the establishment and duties of the Joint Committee on Health Policy Oversight (Attachments 2, 3, and 4). Ms. Calderwood also provided an update on the requirements established by 2005 Sub. for HB 2512 which allows the Fund Board of Governors to make expenditures from the Fund for attorney fees and other professional services regardless of when the services occurred. The law also authorizes the Pooled Money Investment Board to invest moneys on behalf of the Fund in highest level corporate bonds (Attachment 5).

The Chairman then recognized Bob Hayes, Executive Director, Health Care Stabilization Fund, to provide an overview of the 2004-2005 activities of the Health Care Stabilization Fund Board of Governors (Attachments 6 and 7). Mr. Hayes first addressed the Chairman's questions, noting that the oversight by a legislative committee allows the Board of Governors to share information and discuss any problems or needed legislation. Mr. Hayes then introduced Fund Board of Governors staff members present and provided a review of the Board mission, defined health care providers and Fund requirements. Issues highlighted in the presentation included:

- Board review and consideration for change of the basic coverage limit (\$200,000/\$600,000) and the current optional Fund coverage limit selections by health care providers;
- Increase in the number of self-insured hospitals; decrease in investment income;
- Transfers between the Health Care Provider Availability Plan and the Health Care Stabilization Fund; and

- The increased surcharge rates for FY 2006, an overall increase of 15 percent.

In response to a question from the Committee about the investment income amendment made by the 2005 Legislature, Mr. Hayes indicated that the last several investments had been corporate bonds, with the Board investments “laddered out” over an eight-to-ten-year period. In response to questions about self-insured facilities and Board staffing requirements, Mr. Hayes indicated that self-insured facilities make a business decision as to their own risk and the cost-effectiveness of coverages. The current Board staffing level is sufficient to handle the workload associated with the self-insured facilities. Committee members also discussed the projections for investment income. Mr. Hayes indicated that increasing interest rates and a number of maturities coming due in the next twelve months would allow for increased investment income in 2006. Mr. Hayes noted that the first surcharge rate increase in four years had been approved by the Board for FY 2006.

Mr. Hayes also updated the Committee on recent Board activities, including the agency request for an additional legal assistant for claims processing and database work, and its review of methods to improve the timely submission of basic coverage documentation and surcharge payments. Mr. Hayes concluded his testimony, noting that the Board of Governors would appreciate conceptual support of changes in coverage limits.

Russel Sutter, Tillinghast, actuary to the Fund, next reported to the Committee that as of June 30, 2005, the Fund held assets of \$194.0 million and liabilities of \$156.8 million, with \$37.2 million in reserve. Projections for June 2006 include \$199.1 million in assets and liabilities of \$163.5 million, with a reserve of \$35.6 million. Sutter noted that the Fund performance during CY 2004 was much more unfavorable than in previous years, necessitating the Board’s activities in determining a surcharge rate increase, as well as conducting analysis on how providers and certain specialties influence Fund performance and the level of associated risk. Sutter also noted that Fund projections were better than originally anticipated due to a transfer of \$2.2 million to the Fund from the Plan. Sutter highlighted his findings for the CY 2004 Fund performance, including less favorable results for CY 2004 compared to the average for 2001-2003 in the areas of settlements on active and inactive providers and claim reserves on active and inactive providers. For example, the average settlements on active providers during 2001-2003, totaled \$16.2 million, while the actual 2004 experience was \$28.4 million. Fund cashflow was negative in FY 2005, after being slightly positive in FY 2004. A positive cashflow is anticipated for FY 2006 (\$1.9 million) due to the increase in surcharge rates and a \$2.2 million transfer from the Availability Plan ([Attachment 8](#)).

The actuary also highlighted a new feature to the report, analysis of experience by Fund provider classifications and the indicated rate changes by class. The highest five-year loss ratios were from Classes 2, 8, 11, and 13 (Physicians, No Surgery; Surgery Speciality, includes general, plastic, ER with major; Surgery Speciality, Neurosurgery; and Registered Nurse Anesthetists). Answering Committee members’ questions, Mr. Sutter indicated that the data used was from FY 2000 through FY 2004, and noted that the Fund handles the large losses, and certain providers by the nature of their practice who have susceptibility to large claims. Sutter discussed the surcharge rate increases for health care providers, noting that the change in surcharge rates for providers ranged from 5.0 percent (*i.e.* pathologists/psychiatrists; chiropractors; and podiatrists) to 25.0 percent for Classes 2, 8, 11, and 13. Sutter suggested that the Board continue its review of the loss experienced each year.

The Chairman next recognized Rita Noll, chief attorney for the Fund, to present a review of claims against the Fund involving full-time faculty of the University of Kansas School of Medicine and residents in programs in Wichita and Kansas City. Ms. Noll addressed reimbursements from the Private Practice Reserve Fund and the State General Fund from FY 2003 to FY 2005. Ms. Noll reported that reimbursement moneys spent for the resident programs’ settlements and fees, and

expenses during FY 2005 was \$1 million less than FY 2004. Moneys paid by the Fund (from excess coverage) for the residents, and the KU faculty, and foundations totaled \$1,225,000 (Attachment 9). Answering a Committee member's question, Ms. Noll indicated that she was unaware of any proposals to increase the amount of moneys from the Private Reserve Fund.

Following the formal presentations, the Chairman asked if anyone had any suggested changes to the Health Care Provider Insurance Availability Act. There were no proposals for change, although the Board representative indicated that consideration is being given to amendments.

The Chairman asked if there were additional comments on the current status of the medical malpractice market in Kansas and recognized both Bob Hayes and Kurt Scott, Chief Operating Officer, from KaMMCO. Hayes reported no major changes. Mr. Scott characterized the medical malpractice market as relatively stable, noting that prices have stabilized, and there are few new entrants into the marketplace. Scott also addressed the current Missouri market, noting that Missouri physicians are paying roughly double what physicians on the Kansas side of the border pay. Mr. Scott also noted that a Missouri legislative committee is studying the Kansas Fund law. KaMMCO anticipates zero percent change in its health provider rates and a four-and-one-half percent increase for its Kansas hospital participants. Loss prevention services will be provided to its insureds on January 1, 2006. Mr. Scott commented on the questions provided by the Chairman, noting that the Availability Plan is working and is fairly stable. Mr. Scott concluded, noting that the Committee oversight is invaluable and needs to be continued; no need is seen for conducting a separate actuarial study; continued opposition to Fund transfers needs to be stated; the Fund law does need to be amended regarding remittance of payments in a timely manner by insurance companies; and KaMMCO is in support of continued study of basic coverage limits and its effects on the market. A Committee member questioned the proposal to increase the basic coverage limit and the concern that the provider would run the risk of greater payments than under the plan. Mr. Scott noted that the goal is to remain revenue neutral and structure the coverage so as to minimize the impact on providers.

The Chairman then invited Committee discussion on the two annual statutory questions and the other proposals addressed by the conferees. *It was moved by Representative Morrison and seconded by Senator Goodwin that the Committee not request an independent actuarial review. The motion carried.* The Chairman invited comment from Jerry Slaughter, Kansas Medical Society, on the topic of continued legislative oversight and the proposals before the Committee. Mr. Slaughter was supportive of the comments previously made by Mr. Scott and noted that it is hoped that an increase in the basic coverage limit would be revenue neutral to the provider community. Committee members commented on the importance of the Oversight Committee as educators to other members of the Legislature through its role in the health care spectrum and the continued need to study health care. *It was moved by Representative Phelps and seconded by Representative Morrison to continue the Oversight Committee. The motion carried.*

The Committee next made a recommendation to the Health Care Stabilization Fund Board of Governors. *It was moved by Dr. Kindling and seconded by Dr. Rider that the Committee would support an increase from \$200,000 to \$300,000 for the basic coverage limit, if the increase was approved by the Board. The motion carried.* The Committee then addressed the proposal to introduce legislation to address late payments. *It was moved by Dr. Snow and seconded by Senator Goodwin to indicate Committee support of legislation to allow the Board to remit an interest penalty on late payments on the surcharge. The motion carried.* Finally, the Committee reviewed its previous recommendations on transfers from the Health Care Stabilization Fund to the State General Fund. *It was moved by Representative Morrison and seconded by Chairman Bond to restate the Committee's continued opposition to any Fund transfer to the State General Fund.* The recommended language follows:

The Health Care Stabilization Fund Oversight Committee continues to be concerned about and would be opposed to any possible action to transfer

money from the Health Care Stabilization Fund to the State General Fund. The Health Care Stabilization Fund receives its funding from the professional liability coverage surcharge payments by health care providers, as provided for in the Health Care Provider Insurance Availability Act. This source of funding for the Health Care Stabilization Fund is not a fee for a license, registration, certification, government inspection, or other typical government service. The Health Care Stabilization Fund is providing professional liability coverage for Kansas health care providers. Furthermore, as set forth in the Health Care Provider Insurance Availability Act, the Health Care Stabilization Fund is required to be". . . held in trust in the state treasury and accounted for separately from other state funds."

The Committee believes that transferring money to the State General Fund from the Health Care Stabilization Fund is contrary to legislative intent and the provisions of the Health Care Provider Insurance Availability Act, KSA 40-3401, et seq. Further, this Committee believes this kind of "sweeping monies" from the Health Care Stabilization Fund into the State General Fund also is contrary to the obligation of the Health Care Stabilization Fund to provide professional liability coverage for eligible Kansas health care providers, and would impair the ability of the Health Care Stabilization Fund to maintain an actuarially sound program for the benefit of the health delivery system which serves the general public of Kansas.

A Committee member noted that it was important, especially with the potential for Legislative movement of transfers from the Health Care Stabilization Fund to the State General Fund, to maintain Legislative representation from all caucuses on the Committee. Another member noted that the dollars held in trust should stay in trust. The Committee discussion concluded with a Committee member stating a concern that the principle of insurance is to spread the risk, and the class analysis approach to the surcharge warranted study.

There being no further business to come before the Committee, the meeting was adjourned at 10:45 a.m.

Prepared by Melissa Calderwood
Edited by Susan Kannarr

Approved by Committee on:

February 2, 2006
(date)